IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **28.11.2016**

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Crl.O.P Nos.19340 and 19394 of 2010
and M.P.Nos.1 and 1 of 2010

Sunil Behari Mathur ..Petitioner in Crl.O.P.No.19340 of 2010 / A8

Rama Bijapurkar ..Petitioner in Crl.O.P.No.19394 of 2010 / A6

Vs.

Yes Bank Limited
Having its Office at Nehru Centre
9th Floor, Discovery of India,
Dr.A.B.Road,
Worli, Mumbai - 400 018. .. Respondent in both Crl.O.Ps

Prayer : - Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the records and quash the proceedings in C.C.No.1916 of 2010 on the file of the learned XIV Metropolitan Magistrate Court, Egmore, Chennai.

For Petitioners : Mr.Krishna Srinivasan
for M/s. S.Ramasburamaniam
Associates in both Crl.O.Ps

For respondent : Ms.V.Saratha Devi
in both Crl.O.Ps

COMMON ORDER

These two Criminal Original Petitions have been filed by the 8th Accused and 6th Accused, praying to call for the records and quash the proceedings in C.C.No.1916 of 2010 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai as against the petitioners.

2. Both the Criminal Original Petitions have been filed raising a common issue and therefore common order is passed.

3. It is averred in the petitions that Subiksha Trading Services Ltd., represented by its Managing Director, R.Subramanian obtained loan from the respondent / complainant and the cheque issued by the Company towards repayment, dated 20.01.2009 was bounced. Therefore, the complainant filed the private complaint as against the company and its all Directors for the offence under Section 138 r/w 141 of Negotiable Instruments Act, 1891. In the complaint it was stated that all the Directors of the company were incharge of the and responsible for the day-today affairs and management of the first accused company.

4. The petitioners in the present two Criminal Original Petitions having arrayed as A8 and A6 in the case were only Non-Executive Directors of the company that too prior to the date of issuance of the alleged cheque and A8 and A6 resigned from the

post of Directorship on 01.09.2008 and 09.01.2009 respectively. The alleged cheque was issued on 20.01.2009. Therefore, the petitioners are no way responsible for the alleged crime and therefore, proceedings in C.C.No.1916 of 2010 against the petitioners are to be quashed.

5. The learned counsel appearing for the petitioners contend that the petitioners were never be incharge and responsible for the day-today affairs of the company; that as per Form 32, the petitioners were not Directors on the date of issuance of the cheque; that even as per the complaint, the petitioners are not the signatories of the cheque and therefore, the proceedings as against them are to be quashed.

6. The learned counsel appearing for the respondent per contra contends that the complainant has clearly stated in the complaint that the petitioners were also incharge and responsible for the day-today affairs of the company and therefore, it is the matter for evidence and the petitions are liable to be dismissed.

7. There is no dispute that the petitioners in these Criminal Original Petitions have been arrayed as A8 and A6 in C.C.No.1916 of 2010 on the file of the learned XIV Metropolitan Magistrate,

Egmore, Chennai. Though the complainant in the complaint averred that all the accused were responsible and incharge of the day-to-day affairs of the company, it has been specifically stated that A2 is the Managing Director of the company. The third and fourth accused are signatories of the cheque and Board of Directors with Accused No.5 and 7 representing substantial shareholders interest and all the said accused were involved in the day-today affairs of the company along with Accused No.2. Thus, Accused No.2,3,4,5 and 7 have been specifically stated in the complaint as incharge and responsible for the day-to-day affairs of the company. There is no specific mention as to the petitioners, i.e., Accused No.8 and 6 in the complaint.

8. The petitioner in Crl.O.P.No.19340 of 2010 is A8 in the case. It is found from copies of Form 32 filed by the petitioner in the typed set that A8 was appointed as Non-Executive Director on24.04.2007 and he resigned w.e.f 01.09.2008. Similarly, the petitioner in Crl.O.P.No.19394 of 2010 who is arrayed as A6 in the case is also found from the copies of Form 32 filed by the petitioner along with the typed set that he was appointed as Non-Executive Director on 24.04.2007 and he sent resignation letter on 09.01.2009. The alleged cheque was issued on 20.01.2009. Therefore, on the date of issuance of the cheque, both the

petitioners, i.e., A8 and A6 were not even holding the post of Non-Executive Director.

9. The learned counsel appearing for the petitioner cited our Hon'ble Supreme Court Judgment in **S.M.S.Pharmaceuticals Ltd., v. Neeta Bhalla**, reported in **(2005) 8 SCC 89** and contended that as per Section 141 of Negotiable Instruments Act, the complainant has to aver about the person responsible and incharge of the day-to-day affairs of the company and only such person is liable to the prosecuted. The Hon'ble Supreme Court in the above Judgment held as follows :

> "19. In view of the above discussion, our answers to the questions posed in the reference are as under:
>
> (*a*) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.
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> (*b*) The answer to the question posed in sub-para (*b*) has to be in the negative. Merely being a director of a company is not sufficient

to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(*c*) The answer to Question (*c*) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

10. Following the above ruling of the Hon'ble Supreme Court, the petitioners who were not at all Directors of the company on the date of issuance of the cheque cannot be held responsible for such an act. Further, as already pointed out, there is no specific averment in the complaint that the petitioners were responsible and incharge of the day-to-day affairs of the company. Therefore, it is a fit case to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C and quash the proceedings as against the petitioners.

In fine, both these Criminal Original Petitions are allowed and the C.C.No.1916 of 2010 pending on the file of the XIV Metropolitan Magistrate, Egmore, Chennai as against the petitioners / Sunil Behari Mathur (A8) and Rama Bijapurkar (A6) are quashed. The XIV Metropolitan Magistrate, Egmore, Chennai is directed to dispose the case in C.C.No.1916 of 2010 within a period of four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

28.11.2016

Index : Yes / No

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P.KALAIYARASAN, J

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To

1. The XIV Metropolitan Magistrate
   Egmore, Chennai.

2. The Public Prosecutor,
   High Court of Madras, Chennai.

Crl.O.P Nos.19340 and 19394 of 2010

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